

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF NEVADA

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4 UNITED STATES OF AMERICA,

5 Plaintiff,

6 v.

7 JOSHUA RAY FISHER and
8 JUSTIN ANTHONY FISHER,

9 Defendants.

Case No. 2:17-cr-00073-APG-EJY

ORDER

10 Pending before the Court is Defendant Justin Anthony Fisher’s Motion for Transcripts. ECF
11 No. 249. Defendant’s Motion is made post-conviction and post-appeal. For these reasons, no
12 response will be filed.

13 Defendant seeks “court records” regarding criminal proceedings before this Court because
14 he is preparing a habeas petition under 28 U.S.C. § 2255. *Id.* at 3. Defendant says sentencing
15 transcripts are most important. *Id.* Defendant also seeks an order enforcing a prior order vacating
16 the separation of Defendant from his brother Joshua Ray Fisher.

17 On July 19, 2019, the Court issued a Minute Order stating in pertinent part: “At the request
18 of counsel for the Defendant, the Court’s Separation Order is VACATED.” ECF No. 161. The
19 docket reflects his Order remains in effect.

20 With respect to providing Defendant with the records of criminal proceedings, the Court
21 notes Defendant has not yet filed a habeas petition or an application to proceed *in forma pauperis*.
22 Thus, Defendant’s Motion request is premature. 28 U.S.C. § 753(f) (“Fees for transcripts furnished
23 in proceedings brought under section 2255 of this title to persons permitted to sue or appeal in forma
24 pauperis shall be paid by the United States out of money appropriated for that purpose if the trial
25 judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is
26 needed to decide the issue presented by the suit or appeal.”). *See also United States v. Rodriguez-*
27 *Lopez*, Case No. 8:17-cr-42-T-17-CPT, 2019 WL 9047181, at *1 (M.D. Fl. July 30, 2019) *citing*
28 *United States v. MacCollom*, 426 U.S. 317, (1976) (any request for a free transcript prior to the filing

1 of a section 2255 complaint is premature); *Walker v. United States*, 424 F.2d 278, 279 (5th Cir. 1970)
2 (holding that “only where a [habeas] petitioner ... has been granted leave to proceed in forma
3 pauperis and his application is pending before the court is that petitioner entitled to be furnished
4 copies of court records without cost.”).

5 Based on the foregoing, IT IS HEREBY ORDERED that Defendant’s Motion for Transcripts
6 (ECF No. 249) is GRANTED in part and DENIED in part.

7 IT IS FURTHER ORDERED that the Order vacating the previously entered Separation
8 Order remains in effect. *See* ECF No. 161.

9 IT IS FURTHER ORDERED that Defendant’s Motion seeking transcripts of proceedings is
10 DENIED without prejudice as premature.

11 Dated this 26th day of July, 2023.

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14 ELAYNA J. YOUCRAH
15 UNITED STATES MAGISTRATE JUDGE
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